

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

LARRY KAHLEY,

Petitioner,

v.

STEVEN RIVARD, Warden,

Respondent.

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Case No. 10-12705

Honorable John Corbett O'Meara

**ORDER DENYING  
PETITIONER'S MOTION FOR CERTIFICATE OF APPEALABILITY AND  
APPLICATION TO PROCEED *IN FORMA PAUPERIS***

This matter came before the court on petitioner Larry Kahley's February 28, 2012 Motion for Issuance of Certificate of Appealability and Application to Proceed *In Forma Pauperis*. The standards governing *in forma pauperis* motions are set forth in 28 U.S.C. § 1915(a). The district court may authorize the commencement of an appeal of a civil action without the prepayment of fees or costs by a person who submits an affidavit that he or she "is unable to pay such fees or give security therefor." 28 U.S.C. § 1915(a)(1). The district court must examine the financial condition of the applicant to determine whether the payment of fees would cause an undue financial hardship. Prows v. Kastner, 842 F.2d 138, 140 (5th Cir.), cert.denied, 488 U.S. 941 (1988).

In this case petitioner Kahley's claim of indigence is supported by the information supplied in support of his application. The court concludes that paying the appellate filing fee is beyond his means.

Even when an applicant establishes indigence, however, the court must certify that the appeal is filed in good faith. The statute specifically provides that "[a]n appeal may not be taken *in forma*

*pauperis* if the trial court certifies in writing that it is not taken in good faith." 28 U.S.C. § 1915(a)(3). The good faith standard is an objective one, and "good faith" will exist where a party "seeks appellate review of any issue not frivolous." Coppedge v. United States, 369 U.S. 438, 445 (1962). In this case the court's January 31, 2012 order (Docket #12) denied issuance of a certificate of appealability. Therefore, Petitioner may not proceed *in forma pauperis*.

**ORDER**

It is hereby **ORDERED** that plaintiff Larry Kahley's February 28, 2012 Motion for Issuance of Certificate of Appealability and Application to Proceed *In Forma Pauperis* are **DENIED**.

s/John Corbett O'Meara  
United States District Judge

Date: June 28, 2012

I hereby certify that a copy of the foregoing document was served upon the parties of record on this date, June 28, 2012, using the ECF system and/or ordinary mail.

s/Amanda Chubb for William Barkholz  
Case Manager